

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION, AT KNOXVILLE, TENNESSEE

United States of America, :
 :
 Government, :
 :
 Vs. :
 :3:13cr78
 Janet Welch, :
 :
 Defendant, :

Transcript of Change of Plea before the
Honorable Amul R. Thapar on Monday, July 29, 2013.

APPEARANCES:

ON BEHALF OF THE GOVERNMENT:

F.M. Hamilton, III
David Lewen
Assistant U.S. Attorney

ON BEHALF OF THE DEFENDANT:

Robert Kurtz
Attorney at Law

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1 COURTROOM DEPUTY: We are here for a change of
2 plea in docket number 3:13cr78, United States of America
3 versus Janet Welch.

4 Is the government present and ready to proceed?

5 MR. HAMILTON: Trey Hamilton for the
6 government. Present and ready, Your Honor.

7 COURTROOM DEPUTY: Is the defendant present and
8 ready to proceed?

9 MR. KURTZ: Present and ready. Robert Kurtz on
10 behalf of Janet Welch.

11 THE COURT: Mr. Kurtz, would you mind
12 approaching the podium with your client.

13 Mr. Hamilton, who has the original copy of the
14 Plea Agreement so I know?

15 MR. HAMILTON: I have it and am prepared to
16 submit it at this time, if you like.

17 THE COURT: Why don't you hold it for a minute.
18 I think what I will do is when I go over it with
19 Ms. Welch I will have you give it to her, if that is
20 okay.

21 MR. HAMILTON: Yes.

22 THE COURT: Okay, great. Thank you.

23 Ms. Welch, I know you have answered a number of
24 questions already this morning, correct?

25 MS. WELCH: Yes, Your Honor.

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1 THE COURT: Okay. I am going to go through a
2 list of questions as well. It's important that you
3 understand my questions, and I am going to cut you a
4 deal. That is if you don't understand my questions, you
5 stop me and tell me you don't understand them. I will
6 rephrase them in a way that is more coherent. Is that,
7 can we have that agreement?

8 MS. WELCH: Yes, Your Honor.

9 THE COURT: Okay. Can you please place the
10 defendant under oath.

11 COURTROOM DEPUTY: Yes, Your Honor.

12 JANET WELCH

13 was first duly sworn and testified as follows:

14 THE COURT: Now, Ms. Welch, you went over an
15 Information with Judge Guyton, correct?

16 MS. WELCH: Yes, Your Honor.

17 THE COURT: And you waived reading of that
18 indictment or the Information, is that correct?

19 MS. WELCH: Yes, Your Honor.

20 THE COURT: Okay, I just want to ask you a few
21 questions about that before I let you fill out that
22 waiver.

23 Mr. Kurtz, I am going to ask questions. I know
24 Judge Guyton asked some questions as to competence
25 before he went through his proceeding. I am going to do

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1 so as well. I will use them for both my questions on
2 the information and questions on the plea. I am not
3 going to make her answer the questions twice. Is that
4 all right with you?

5 MR. KURTZ: It is understandable. We agree,
6 Your Honor.

7 THE COURT: Ms. Welch, how old are you?

8 MS. WELCH: 44.

9 THE COURT: Tell me how far you went in school.

10 MS. WELCH: Some college.

11 THE COURT: Okay. Where did you go to college?

12 MS. WELCH: Pellissippi.

13 THE COURT: How far did you go?

14 MS. WELCH: A year.

15 THE COURT: What did you do after that?

16 MS. WELCH: Started working.

17 THE COURT: Where did you start working?

18 MS. WELCH: Various jobs. Glass company and
19 then I started in the Knoxville Hilton and different
20 companies.

21 THE COURT: Okay. When did you end up at
22 Pilot?

23 MS. WELCH: In 1998.

24 THE COURT: You so you have worked there for
25 about 15 years, is that a fair --

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1 MS. WELCH: 16 in October.

2 THE COURT: 16 in October. Great.

3 Have you ever during any portion of your life
4 been treated for any mental illnesses?

5 MS. WELCH: No, Your Honor.

6 THE COURT: Have you ever been addicted to
7 narcotics of any kind?

8 MS. WELCH: No, sir.

9 THE COURT: Have you taken any narcotic drugs,
10 hallucinogens or tranquilizers in the past 24 hours?

11 MS. WELCH: No, sir.

12 THE COURT: Have you taken any medicine in the
13 past 24 hours?

14 MS. WELCH: Yes.

15 THE COURT: Why don't you tell me about that.

16 MS. WELCH: I take Prilosec for stomach issues.
17 I have ulcers.

18 THE COURT: How often do you take that?

19 MS. WELCH: Once a day.

20 THE COURT: How long have you been taking that?

21 MS. WELCH: Probably three years.

22 THE COURT: It does not affect your ability --
23 obviously I can tell, but it doesn't affect your ability
24 to think clearly or understand my questions?

25 MS. WELCH: No.

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1 THE COURT: Have you taken any other pills of
2 any kind in the past 24 hours?

3 MS. WELCH: I took some Ibuprofen yesterday.

4 THE COURT: Yesterday is the last time you took
5 Ibuprofen?

6 MS. WELCH: Yes, sir.

7 THE COURT: What did you take, one or two?

8 MS. WELCH: Two.

9 THE COURT: 400 milligrams?

10 MS. WELCH: Yes.

11 THE COURT: That wears off in your experience
12 in four to six hours?

13 MS. WELCH: Yes, sir.

14 THE COURT: Have you drank any alcoholic
15 beverages in the past 24 hours?

16 MS. WELCH: No, Your Honor.

17 THE COURT: Mr. Kurtz, do you have any question
18 as to this defendant's competence at this time?

19 MR. KURTZ: No, Your Honor, I do not.

20 THE COURT: During your representation of her
21 she has been taking the medication. Have you ever seen
22 any erratic decisionmaking or irrational thinking that
23 made you question her competency in anyway?

24 MR. KURTZ: Never, Your Honor.

25 THE COURT: I do find that the defendant is

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1 competent to proceed. It's clear to me that she
2 understands my questions. She is looking me in the eye
3 and is proceeding as someone should.

4 Mr. Hamilton, do you have any question as to
5 this defendant's competence to plead at this time?

6 MR. HAMILTON: The government does not.

7 THE COURT: Great.

8 Now, you went over the Information, you
9 reviewed it, correct?

10 MS. WELCH: Yes.

11 THE COURT: All right. I just want to talk to
12 you for a couple of minutes about your rights with
13 regard to a grand jury charge versus an information
14 charge. Once I understand that you understand your
15 rights, then I will let you sign the waiver, okay?

16 MS. WELCH: Yes, sir.

17 THE COURT: You understand you have a
18 constitutional right to be charged by an indictment of a
19 grand jury, but you can waive that right and consent to
20 being charged by information of the United States,
21 correct?

22 MS. WELCH: Yes.

23 THE COURT: All right. I am going to go over a
24 few other things. I am going to read them to you and
25 then I am going to ask them to you. Instead of an

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1 indictment the felony charge in this has been brought by
2 the United States Attorney by the filing of an
3 Information. Unless you waive indictment, you cannot be
4 charged with a felony, unless a grand jury finds by
5 return of an indictment that there is probable cause to
6 believe that a crime has been committed and that you
7 committed it. If you do not waive indictment, the
8 government may present the case to the grand jury and
9 request it to indict you. The grand jury is composed of
10 at least 16 individuals and not more than 23 people, at
11 least 12 of whom must find that there is probable cause
12 to believe that a crime has been committed and that you
13 committed the crime in order to return an indictment
14 against you.

15 The grand jury might or might not indict you.
16 If you waive indictment by the grand jury, the case will
17 proceed against you on the information just as though
18 you have been indicted.

19 Do you understand all of your rights with
20 regard to the grand jury?

21 MS. WELCH: Yes, Your Honor.

22 THE COURT: Has anyone made any threats or
23 promises to induce you to waive your right to be charged
24 by a grand jury?

25 MS. WELCH: No, Your Honor.

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1 THE COURT: If you choose to be charged by
2 information, you do not give up any of your other
3 constitutional rights and we'll go over those during the
4 plea proceeding. Have you gone over those with your
5 attorney?

6 MS. WELCH: Yes, Your Honor.

7 THE COURT: They are also listed in your Plea
8 Agreement, correct?

9 MS. WELCH: Yes, sir.

10 THE COURT: You understand all those
11 constitutional rights?

12 MS. WELCH: Yes, sir.

13 THE COURT: Great.

14 Mr. Kurtz, have you gone over her rights
15 vis-a-vis the grand jury and the information with her?

16 MR. KURTZ: I have.

17 THE COURT: And based on your consultation with
18 her do you believe she understands her rights?

19 MR. KURTZ: I do.

20 THE COURT: Do you believe she understands that
21 by waiving her rights she can be charged with an
22 information?

23 MS. WELCH: Yes, sir, Your Honor.

24 THE COURT: Ms. Welch, do you wish to waive
25 your right to indictment by a grand jury and choose to

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1 be charged by the filing of an information?

2 MS. WELCH: Yes, Your Honor.

3 THE COURT: Okay. Mr. Kurtz, do you have the
4 waiver?

5 MR. KURTZ: We do.

6 THE COURT: Can you both execute the waiver,
7 please.

8 Mr. Hamilton, the waiver of indictment is an
9 exact copy of the Information, is that a fair statement?

10 MR. HAMILTON: The body of it is, yes, sir.

11 THE COURT: Thank you, the body of it is. I
12 always ask this and I apologize. You don't need me to
13 sign the waiver, correct?

14 MR. HAMILTON: That has not been the custom in
15 this district. The Court is welcome to.

16 THE COURT: I am happy just to follow the
17 custom. I want to make sure.

18 I do determine that the defendant has
19 competently exercised her right to waive the
20 presentation of facts of this case to a grand jury and
21 has signed the necessary waiver in open court. I do
22 find the waiver of indictment is knowingly and
23 voluntarily made and is, therefore, accepted. We will
24 file the waiver of indictment in the record.

25 I know Judge Guyton has already unsealed the

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1 record. I don't need to do that.

2 Ms. Welch, I am now going to proceed to the
3 plea proceeding. I am going to ask you some questions
4 about that, all right. It's my understanding first and
5 foremost that you want to plead guilty, correct?

6 MS. WELCH: Yes, Your Honor.

7 THE COURT: I should have mentioned this. I
8 know Judge Guyton probably went over it as well. You
9 understand you are under oath and if you give false
10 answers to any of my questions you can be charged with
11 perjury or making a false statement, correct?

12 MS. WELCH: Yes.

13 THE COURT: Do you have any questions about
14 that?

15 MS. WELCH: No, Your Honor.

16 THE COURT: Great. Now, in going over -- I am
17 going to go back a little and just talk about the
18 Information for a second. You reviewed the Information,
19 correct?

20 MS. WELCH: Yes, sir, Your Honor.

21 THE COURT: You went over it with your
22 attorney?

23 MS. WELCH: Yes, Your Honor.

24 THE COURT: Did you talk to him about
25 everything you know about the case?

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1 MS. WELCH: Yes, Your Honor.

2 THE COURT: Did you in talking to him about
3 everything you know about the case talk about any
4 possible defenses that you may have to the allegations
5 of the government?

6 MS. WELCH: Yes, Your Honor.

7 THE COURT: Did you go over every paragraph in
8 the Information?

9 MS. WELCH: Yes, Your Honor.

10 THE COURT: Do you feel like you have discussed
11 everything with Mr. Kurtz you need to discuss in order
12 to enter a knowing, intelligent and voluntary plea here
13 today?

14 MS. WELCH: Yes, Your Honor.

15 THE COURT: So there is no questions lingering
16 in your mind about geez, I don't know the answer to
17 this?

18 MS. WELCH: No, sir.

19 THE COURT: Okay. Have you in doing so, did
20 you discuss the maximum possible penalties that you can
21 face by pleading guilty?

22 MS. WELCH: Yes, sir.

23 THE COURT: Do you understand the charges
24 against you?

25 MS. WELCH: Yes, sir, Your Honor.

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1 THE COURT: Are you happy with your lawyer's
2 advice and representation in this case?

3 MS. WELCH: Yes, Your Honor.

4 THE COURT: Okay. I want to go over -- I know
5 you have discussed with him the maximum penalties. I
6 know you heard them from Judge Guyton as well or
7 Mr. Hamilton may have stated them. I want to go over
8 them with you as well.

9 It's my understanding you are pleading guilty
10 to a 371 charge, which I call just a conspiracy to
11 commit a criminal offense, a federal criminal offense.
12 Is that correct?

13 MS. WELCH: Yes, Your Honor.

14 THE COURT: Do you understand that carries with
15 it a statutory maximum penalty of five years in prison,
16 correct?

17 MS. WELCH: Yes, Your Honor.

18 THE COURT: It also carries with it a fine of
19 not more than \$250,000, a mandatory special assessment
20 of a hundred dollars, restitution and potential
21 forfeiture. Do you understand that?

22 MS. WELCH: Yes, Your Honor.

23 THE COURT: Finally, I want to talk to you
24 about supervised release. I left that out. It carries
25 with it a term of three years, up to three years of

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1 supervised release. Do you understand that?

2 MS. WELCH: Yes, Your Honor.

3 THE COURT: Okay. Now, supervised release is a
4 period of supervision that follows any period of
5 incarceration. All right?

6 MS. WELCH: Yes, sir.

7 THE COURT: And it puts conditions on you that
8 are stricter than society in general. I am going to
9 give you an example. I could say to you as a condition
10 of your supervision, for example, that you either --
11 let's say you have to finish college. Okay, now, any
12 one else in society doesn't have to do that, right?

13 MS. WELCH: Right.

14 THE COURT: Okay, so let's say that you have
15 two years to finish college, even though you have only
16 got one year in, because I want you to finish in the
17 three years of supervision. Does that make sense?

18 MS. WELCH: Yes, Your Honor.

19 THE COURT: Let's say you don't finish in two
20 years. What happens to you?

21 MS. WELCH: I could be incarcerated.

22 THE COURT: That's right. Then your
23 supervision could start anew. Do you understand that?

24 MS. WELCH: Yes, sir.

25 THE COURT: It can be like a revolving door if

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1 you don't comply with the conditions of supervision, do
2 you understand that?

3 MS. WELCH: Yes.

4 THE COURT: Do you understand in order for the
5 government to prove you guilty of a criminal violation
6 they have to prove you guilty beyond a reason doubt?

7 MS. WELCH: Yes.

8 THE COURT: And do you understand that is a
9 difficult standard of proof?

10 MS. WELCH: Yes, Your Honor.

11 THE COURT: I want to tell you something about
12 a supervised release violation. If, for example -- I am
13 going to give you another condition. I say you can't
14 drink alcohol. Mr. Hamilton learns you are drinking
15 alcohol. He can bring a charge that you violated your
16 terms of supervision to the Court's attention. He only
17 needs to prove that by a preponderance of the evidence.
18 What that means is he just has to show it's more likely
19 than not and tip the balance of the scales of justice in
20 his favor, which is much different than beyond a
21 reasonable doubt. Do you understand that?

22 MS. WELCH: Yes, Your Honor.

23 THE COURT: Do you have any questions about
24 that?

25 MS. WELCH: No, Your Honor.

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1 THE COURT: Do you any questions about any of
2 the maximum penalties in this case?

3 MS. WELCH: No, Your Honor.

4 THE COURT: Do you understand that if the Court
5 accepts your plea of guilty it can impose the maximum
6 penalty?

7 MS. WELCH: Yes, Your Honor.

8 THE COURT: Do you understand if the plea of
9 guilty is accepted, the Court can impose the same
10 penalty as though you pled not guilty, stood trial and
11 were convicted by a jury?

12 MS. WELCH: Yes, sir.

13 THE COURT: Do you understand the offense to
14 which you are pleading guilty is a felony offense and
15 that if your plea is accepted you will be adjudged
16 guilty of that offense and such adjudication may deprive
17 you of valuable civil rights such as the right to vote,
18 right to hold public office, the right to serve on a
19 jury and the right to possess any kind of firearm?

20 MS. WELCH: Yes, sir.

21 THE COURT: Are you a citizen of the United
22 States?

23 MS. WELCH: Yes, sir.

24 THE COURT: Do you understand people who are
25 not citizens of the United States, if they plead guilty

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1 to this offense, they will most likely be deported?

2 MS. WELCH: Yes, Your Honor.

3 THE COURT: I want to talk to you about the
4 collateral consequences of pleading guilty. What I mean
5 by that is I want to talk to you about what happens when
6 you plead guilty. I am just going to give you some
7 examples, but I want you to understand the examples are
8 much broader. For example, in the example it's easier
9 to understand what I mean.

10 By pleading guilty you can lose any
11 professional license. You loose the right to possess a
12 firearm which means you lose concealed carry or other
13 licenses you have with regards to guns. You will also
14 find that, as a convicted felon, it is much more
15 difficult to find a job. These are just some of the
16 examples of what a collateral consequence is of pleading
17 guilty. They are much broader than that. I can't even
18 imagine some, nor can you.

19 Do you understand by pleading guilty there are
20 ramifications that we can't even think about today?

21 MS. WELCH: Yes, Your Honor.

22 THE COURT: Did you and your attorney talk
23 about how the sentencing guidelines might apply in your
24 case?

25 MS. WELCH: Yes, Your Honor.

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1 THE COURT: I want to talk to you about that as
2 well. The first thing I want to tell you is that the
3 sentencing guidelines are now merely advisory. What
4 that means is they are a starting benchmark for the
5 Court. The Court uses them along with the factors found
6 in 18 United States Code § 3553(a), which are the
7 statutory factors of sentencing. Did you go over those
8 with your attorney?

9 MS. WELCH: Yes, Your Honor.

10 THE COURT: Do you understand that the Court
11 will use the guidelines and the statutory factors to
12 determine what a sufficient sentence is in your case?

13 MS. WELCH: Yes, Your Honor.

14 THE COURT: Do you have any questions at all
15 about how sentencing works?

16 MS. WELCH: No, Your Honor.

17 THE COURT: Do you understand the Court will
18 not be able to determine a sentence for your case until
19 after the Presentence Report has been completed and you
20 and the government have had an opportunity to challenge
21 the facts and conclusions reported by the probation
22 officer?

23 MS. WELCH: Yes, Your Honor.

24 THE COURT: Do you understand the Court is not
25 bound by any stipulation of facts between you and the

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1 government and the court will with the aid of the
2 Presentence Report determine what facts are relevant to
3 sentencing?

4 MS. WELCH: Yes, Your Honor.

5 THE COURT: Do you understand that parole has
6 been abolished and, if you are sentenced to prison, you
7 will not released on parole?

8 MS. WELCH: Yes, Your Honor.

9 THE COURT: Do you understand even if the Court
10 can place you on probation, it may or may not do so?

11 MS. WELCH: Yes.

12 THE COURT: Do you have any questions about
13 anything we have gone over so far?

14 MS. WELCH: No, sir.

15 THE COURT: I want to talk to you about your
16 constitutional rights. The Court reminds and advises
17 you that under the Constitution and laws of the United
18 States you have the right to plead and the persist in
19 your plea of not guilty. You have the right to be tried
20 by a jury and at a speedy and public trial you would
21 have the right to the assistance of counsel, right to
22 confront and cross-examine the witnesses who testify
23 against you and the right to refuse to testify yourself,
24 unless you voluntarily chose to do so in our own
25 defense.

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1 If you decide not to testify, that cannot be
2 held against you and the jury will be instructed that
3 they cannot hold it against you. At such trial you
4 would be presumed innocent until such time, if ever, as
5 the government established your guilt by competent
6 evidence beyond a reasonable doubt. At such trial you
7 would be entitled to the issuance of subpoenas to compel
8 the attendance of witnesses on your behalf.

9 The government would have to pay for the
10 attendance of witnesses, if you could not afford to do
11 so. Do you understand if you plead guilty you give up
12 all the rights I have just mentioned?

13 MS. WELCH: Yes, Your Honor.

14 THE COURT: Do you understand if you plead
15 guilty there will not be a further trial of any kind in
16 your case so that by pleading guilty you are giving up
17 the right to a trial?

18 MS. WELCH: Yes, Your Honor.

19 THE COURT: If you plead guilty, do you
20 understand you will also have to waive your right not to
21 incriminate yourself since I will have to ask you
22 questions about what you did in order to satisfy myself
23 that you are guilty as charged and you will have to
24 acknowledge your guilt?

25 MS. WELCH: Yes, Your Honor.

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1 THE COURT: Are you willing to waive and give
2 up your right to trial and the other rights I have just
3 discussed?

4 MS. WELCH: Yes, Your Honor.

5 THE COURT: Mr. Hamilton, how many plea
6 agreements have been tendered to the defendant?

7 MR. HAMILTON: One.

8 THE COURT: Okay is this the most favorable --
9 obviously, if it's one, it's the most favorable one she
10 could receive? In other words, maybe it's a better
11 way -- that is a bad question.

12 You have had conversations with Mr. Kurtz
13 before the Plea Agreement. When I look at the Plea
14 Agreement, and I am doing this off memory, but it said
15 something like you would only hold her accountable for
16 the dollar amount to which she was personally
17 responsible. You had specific guideline sections, the
18 number of victims that -- you can correct me. I think
19 you agreed that she didn't use sophisticated means so
20 there were specific sections in there, correct?

21 MR. HAMILTON: There are references to the
22 guidelines and the Plea Agreement. The United States
23 made one plea offer to this defendant.

24 THE COURT: Did you negotiate the terms with
25 Mr. Kurtz? That is what I am trying to get ahold of.

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1 In other words, did you all have discussions before the
2 Plea Agreement?

3 MR. HAMILTON: The United States' recollection
4 is that we presented the plea resolution scenario and it
5 was accepted.

6 THE COURT: Okay. Mr. Kurtz -- thank you,
7 Mr. Hamilton.

8 Mr. Kurtz, you obviously talked to Mr. Hamilton
9 during your representation of the defendant?

10 MR.KURTZ: Yes, Your Honor.

11 THE COURT: And did you share all those
12 communications with Ms. Welch?

13 MR. KURTZ: The ones that were relevant to her
14 case and to the plea negotiations that took place, yes,
15 we had discussions about those negotiations and all the
16 discussions I had with the U.S. Attorney's office.

17 THE COURT: This Plea Agreement, you agree with
18 Mr. Hamilton, is the only Plea Agreement that your
19 client received?

20 MR.KURTZ: That is correct.

21 THE COURT: Ms. Welch, you heard what was just
22 said. Is it a fair statement, to the best of your
23 knowledge, that Mr. Kurtz shared all discussions that he
24 had with Mr. Hamilton about the Plea Agreement and your
25 case in particular with you?

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1 MS. WELCH: Yes, Your Honor.

2 THE COURT: Do you feel like you have discussed
3 and understand the terms of the Plea Agreement?

4 MS. WELCH: Yes, Your Honor.

5 THE COURT: All right. I want to go over that
6 with you now.

7 Mr. Hamilton, can you give her the original.

8 I just want as we go, Ms. Welch -- I noticed I
9 like this practice that they follow here. We don't do
10 it in our district, which is they have you initial each
11 page. Do you see that?

12 MS. WELCH: Yes, Your Honor.

13 THE COURT: As I go through it I am going to
14 ask you each time -- I know it is going to get a little
15 repetitive, but if those are your initials because I
16 want to be assured that the Plea Agreement in front of
17 you is the same one that you reviewed with your attorney
18 before signing it. Is that fair?

19 MS. WELCH: Yes, Your Honor.

20 THE COURT: Okay. Great. You see the Plea
21 Agreement in front of you. It now has handwritten in it
22 3:13cr78. Do you see that in the upper right-hand
23 corner?

24 MS. WELCH: Yes, sir.

25 THE COURT: It says United States of America

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1 versus Janet M. Welch, correct?

2 MS. WELCH: Correct.

3 THE COURT: You will see that the first
4 paragraph indicates you are going to plea to an
5 information which we are doing here today. It lists the
6 maximum penalties we went over, correct?

7 MS. WELCH: Yes, sir.

8 THE COURT: The second paragraph it says that
9 you are pleading guilty because you are in fact guilty
10 and then lists what the United States would have to
11 prove beyond a reasonable doubt, correct?

12 MS. WELCH: Yes, Your Honor.

13 THE COURT: That goes on to the second page.
14 At the bottom of that page -- that is the original, you
15 are looking at the original Plea Agreement, right?
16 That's the very page that you initialed before.

17 MS. WELCH: Yes, Your Honor.

18 THE COURT: Great. Now, if you look at the
19 beginning of the second page -- and I am just going to
20 summarize this for you. You understand if this case
21 were to go to trial the United States would have to
22 prove these three essential elements beyond a reasonable
23 doubt, correct?

24 MS. WELCH: Yes.

25 THE COURT: First, that you agreed with another

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1 person to commit mail fraud. Do you see that?

2 MS. WELCH: Yes, sir.

3 THE COURT: Again I am summarizing. That is
4 that with the intent to defraud you helped -- so instead
5 it says you knowingly. You conspired with another, so
6 you worked with another, to devise and intended to
7 devise and participate in a scheme and artifice to
8 defraud and basically -- and I am again restating --
9 they are stating the exact terms in here. Do you
10 understand that?

11 MS. WELCH: Yes, sir.

12 THE COURT: I am going to try and state it in
13 plain English because Congress writes things in one way.
14 They are doing what they should do which is putting it
15 in here. Do you understand that this is the language of
16 what they have to prove?

17 MS. WELCH: Yes, Your Honor.

18 THE COURT: What it means in plain English is
19 that you agreed with another person to defraud people to
20 get money.

21 MS. WELCH: Yes, Your Honor.

22 THE COURT: You understand that? The
23 government would have to prove that beyond a reasonable
24 doubt. They would also have to prove that you committed
25 or you conspired with that person to commit mail fraud.

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1 Do you understand that?

2 MS. WELCH: Yes, Your Honor.

3 THE COURT: It basically means you used the
4 mails in furtherance of your scheme to defraud.

5 MS. WELCH: Yes.

6 THE COURT: Knowingly and voluntarily joined in
7 the conspiracy and that an act was committed in
8 furtherance of the conspiracy. Do you understand they
9 have to prove all that beyond a reasonable doubt?

10 MS. WELCH: Yes, Your Honor.

11 THE COURT: Great.

12 The next paragraph, which we are going to go
13 over later, but three gives a summary, which as it
14 states, it's not all the facts and you and the
15 government can admit other facts during sentencing.
16 Gives an entire summary and it goes on.

17 Now, the bottom of page 2 you initialed,
18 correct?

19 MS. WELCH: Yes, Your Honor.

20 THE COURT: The bottom of page 3 you initialed,
21 correct?

22 MS. WELCH: Yes.

23 THE COURT: The bottom of page 4 you initialed.

24 MS. WELCH: Yes, sir.

25 MR. KURTZ: And the bottom of page 5 you

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1 initialed.

2 MS. WELCH: Yes, sir.

3 THE COURT: The bottom of page 6 you initialed.

4 MS. WELCH: Yes, Your Honor.

5 THE COURT: The bottom of page 7?

6 MS. WELCH: Yes, sir.

7 THE COURT: Okay. I am going to stop you
8 there.

9 All of those facts from pages I think it was 3
10 to 7 where you initialed, you initialed because you
11 agreed with those facts, correct?

12 MS. WELCH: Yes, Your Honor.

13 THE COURT: Those facts are in fact true and
14 that is why you initialed the document?

15 MS. WELCH: Yes, Your Honor.

16 THE COURT: Now, here I am stopping you because
17 we go from facts in my mind, and we may think of this
18 differently -- you tell me if you think of it
19 differently. At the end of paragraph (l) is the end of,
20 as I see it, the facts and then this is what I was
21 talking about earlier, (m), (n) and (o) are sentencing
22 guideline agreements, correct?

23 MS. WELCH: Yes, Your Honor.

24 THE COURT: Let's go over those a second. At
25 the bottom of paragraph (m) it says that the United

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1 States will seek to hold the defendant responsible, the
2 dollar amount they'll limit it to is \$1 million. Do you
3 see that?

4 MS. WELCH: Yes, Your Honor.

5 THE COURT: They are going to seek an offense
6 level between \$400,000 to \$1 million.

7 MS. WELCH: Yes, Your Honor.

8 THE COURT: Do you understand that is not
9 binding on the Court?

10 MS. WELCH: Yes, Your Honor.

11 THE COURT: Even though the United States and
12 you may agree to that, the Court will with the aid of
13 the Presentence Report determine what level is relevant
14 to sentencing. Do you understand that?

15 MS. WELCH: Yes, Your Honor.

16 THE COURT: Is that correct?

17 MS. WELCH: Yes, sir.

18 THE COURT: Mr. Hamilton, you agree with that
19 is correct, correct?

20 MR. HAMILTON: Generally, Your Honor. I might
21 just suggest the following, if I may.

22 THE COURT: You may.

23 MR. HAMILTON: I may have misheard the Court.
24 I thought the Court said the United States would seek a
25 sentence in the range of 400,000 to \$1 million. It is

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1 our understanding that that is intended to be a ceiling.
2 In other words, there are two limitations, one is that
3 the loss had to have been caused by Ms. Welch. And two
4 that loss that was caused by her has a ceiling of
5 \$1 million. It's possible that the range could be lower
6 than that, depending on what the facts ultimately show.

7 THE COURT: Let me ask you a question,
8 Mr. Hamilton. I think that is fair point. If it is
9 between 200 and 400,000, as the probation officer
10 determines it, you are saying that the United States
11 waives the right to object to that and put on proof that
12 it is between 400 and a million or are you saying
13 something different?

14 MR. HAMILTON: No, I think that is exactly what
15 we are saying. I wouldn't see it as a necessarily --
16 well, I don't think that we would say that. I think
17 what we would say is that we aren't going to seek
18 anything more than \$1 million. I don't think we are
19 saying if the probation office determines that -- we are
20 not waiving any right to object to the Presentence
21 Report, but we are saying that we aren't going to seek
22 anything, a loss figure that is outside the range of
23 400,000 to a million dollars.

24 THE COURT: That is how I understood it. That
25 is why I asked the question.

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1 Stay standing. I am going to ask you another
2 question in a minute.

3 Ms. Welch, do you understand what the United
4 States is bound by, as I understand this, and
5 Mr. Hamilton, I will give him a chance to explain if I
6 am wrong --

7 Is that they will not seek, even if the
8 evidence shows you are responsible later for
9 1.8 million, the United States cannot seek to hold you
10 responsible for more than a million and that is one of
11 the benefits of your bargain.

12 If the Presentence Report determines that it is
13 300,000 the United States can put on evidence in front
14 of me to, they can object and show that you are actually
15 personally responsible for any amount up to a million.
16 Do you understand that?

17 MS. WELCH: Yes, Your Honor.

18 THE COURT: Mr. Hamilton, did I fairly and
19 accurately summarize the way this works now?

20 MR. HAMILTON: That is correct, Your Honor.

21 THE COURT: Additionally, now I am going on to
22 paragraph (n). The investigation may reveal more than
23 50 victims were involved in the conspiracy. Now I am
24 skipping -- and again is that the United States agrees
25 that your participation in the conspiracy involved no

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1 more than 49 victims and, therefore, the United States
2 limits its ability, the way I understand this, to that
3 number. In other words, the most the United States can
4 seek to hold you accountable for is up to 50 victims.

5 MS. WELCH: Yes, Your Honor.

6 THE COURT: All right. Between 0 and 49. What
7 they are saying is it's between 10 and 49, but again I
8 understand this to operate like the dollar figure did.
9 If probation comes back and says it's 55, they are bound
10 to seek 49. It doesn't mean it's binding on me. Do you
11 understand that?

12 MS. WELCH: Yes, Your Honor.

13 THE COURT: Is that accurate, Mr. Hamilton?
14 Does this operate the same?

15 MR. HAMILTON: Yes, Your Honor.

16 THE COURT: Finally, the United States agrees
17 that your participation did not involve a sophisticated
18 means. That is (o). Do you see that?

19 MS. WELCH: Yes, Your Honor.

20 THE COURT: The next paragraph, which is 4,
21 goes over your constitutional rights which we have
22 already covered, correct?

23 MS. WELCH: That is correct.

24 THE COURT: And that is your initials at the
25 bottom of this page which is page 8.

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1 MS. WELCH: Yes, Your Honor.

2 THE COURT: Paragraph 5 just goes over what,
3 and I talked to you about this, what I will impose at
4 sentencing which includes up to the maximum penalty, the
5 mandatory special assessment, any applicable forfeiture
6 in this case, restitution that may be applicable and
7 supervised release, as we discussed before. I don't
8 know if it lists supervised release. It does in
9 paragraph (a).

10 MS. WELCH: Yes, Your Honor.

11 THE COURT: Great. Then paragraph 6 goes on to
12 the next page. Is this your initials at the bottom of
13 page 9?

14 MS. WELCH: Yes, Your Honor.

15 THE COURT: Paragraph 6 talks about your level
16 of cooperation. Paragraph 7 talks about the how the
17 government can and cannot use your cooperation. Do you
18 understand both of those?

19 MS. WELCH: Yes, Your Honor.

20 THE COURT: At the bottom that is your initials
21 at page 10?

22 MS. WELCH: Yes, Your Honor.

23 THE COURT: Paragraph 8 talks about that the
24 government will bring or may bring your cooperation to
25 the Court's attention, probably at sentencing, so that

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1 the Court understands and appreciates that in
2 determining a fair and appropriate sentence in your
3 case. Do you understand that?

4 MS. WELCH: Yes, Your Honor.

5 THE COURT: Paragraph 9 talks about acceptance
6 of responsibility. Again that is a guidelines thing.
7 Did go over that with your attorney?

8 MS. WELCH: Yes, Your Honor.

9 THE COURT: Do you understand how that works,
10 two versus three levels and it's all determined by the
11 level you are at?

12 MS. WELCH: Yes, Your Honor.

13 THE COURT: Great. Paragraph 10 says you will
14 pay the special assessment of \$100 before sentencing.

15 MS. WELCH: Yes, Your Honor.

16 THE COURT: Paragraph 11 goes over restitution.
17 Is that your initials at the bottom of page 11?

18 MS. WELCH: Yes, Your Honor.

19 THE COURT: Okay. Paragraph 12 goes over your
20 financial obligations and it includes what the United
21 States may ask you to do in furtherance of these
22 financial obligations.

23 MS. WELCH: Yes, Your Honor.

24 THE COURT: Is that your initials at the bottom
25 of page 12?

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1 MS. WELCH: Yes, Your Honor.

2 THE COURT: I want to talk to you for a second
3 about Paragraph 3. Before I do so I guess I have a
4 question for the attorneys. Mr. Hamilton, I will start
5 with you. And that is that here it says the defendant
6 retains the right to appeal a sentence imposed above the
7 sentencing guideline range. Okay, there is no mandatory
8 minimum applicable in this case. You agree with me,
9 correct?

10 MR. HAMILTON: Yes, Your Honor.

11 THE COURT: Can I ask you a question about the
12 applicable guideline range? Let's say I determine the
13 guideline range is 24 and she objects and says it should
14 be 20. I am just making this up. Can she appeal my
15 determination of the guideline range itself instead
16 of -- in other words, it says above the applicable
17 guideline range. Is it applicable guideline range as
18 determined by me, the applicable guideline range as
19 determined by the Presentence Report? Does that make
20 sense?

21 MR. HAMILTON: Paragraph 13(a) says it's the
22 applicable guideline range as determined by the District
23 Court. That would be as determine by this Court.

24 THE COURT: Okay. Thank you.

25 You see, determined by the District Court?

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1 MS. WELCH: Yes, sir.

2 THE COURT: Let's go over this entire thing.
3 First, the questions I was asking Mr. Hamilton. Do you
4 understand that if I determined the guideline range is
5 24 and Mr. Kurtz says, he is crazy, it should be 20, you
6 are stuck with that determination?

7 MS. WELCH: Yes, Your Honor.

8 THE COURT: You can't appeal my determination
9 of the guideline range.

10 MS. WELCH: Yes, Your Honor.

11 THE COURT: Do you also understand that in
12 exchange for the concessions the government has given
13 you agree you won't appeal your conviction in this case?

14 MS. WELCH: Yes, Your Honor.

15 THE COURT: Once judgment is entered the only
16 thing you can appeal is your sentence only under very
17 limited circumstances, do you understand that?

18 MS. WELCH: Yes, sir.

19 THE COURT: Let's say your guideline range is
20 63 to 78 months. I am making it up, all right. Your
21 attorney says it should have been 24 to 30 months. All
22 right. I sentence you to 70 months. So it is 63 to
23 78 months, as determined by me. Your attorney says he
24 is off his rocker, it should be 24 to 30 months. I
25 sentence you to 70 months. Can you appeal?

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1 MS. WELCH: No, sir.

2 THE COURT: Explain to me why not.

3 MR.KURTZ: Your Honor, I think she would be
4 able to appeal under that scenario.

5 THE COURT: Why?

6 MR. KURTZ: The statutory maximum is 60 months.

7 THE COURT: Thank you. You are thinking better
8 than me this morning.

9 Right. He is better than both of us. Yes, you
10 can appeal because it's above the statutory max. Let's
11 say it's 30 to 36, as I determine it, and your attorney
12 determines it 24 to 30 and I sentence you to 36 months.
13 Can you appeal?

14 MS. WELCH: No, sir.

15 THE COURT: Okay, why not?

16 MS. WELCH: Because you decided and I gave up
17 the right to appeal that.

18 THE COURT: Right. Now, let's say I say it's
19 30 to 36 months, but I sentence you to 42 months. Can
20 appeal? These are hard questions. Now this one is a
21 little trickier one.

22 MS. WELCH: Yes, Your Honor, I can appeal.

23 THE COURT: Okay, explain to me why.

24 MS. WELCH: Because it's above the guideline
25 range that was set.

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1 THE COURT: Right. I set the guideline range.
2 That is exactly right. I set the guideline range. Once
3 I set the guideline range, I am stuck with that for
4 purposes of appeal. It doesn't mean I am not right.
5 You could appeal and lose, you understand that, right?

6 MS. WELCH: Yes.

7 THE COURT: Because I am allowed to vary
8 outside the guideline range both up and down based on
9 those other statutory factors we discussed. Right?

10 MS. WELCH: Yes, Your Honor.

11 THE COURT: Okay. Do you have any questions
12 about that?

13 MS. WELCH: No, sir.

14 THE COURT: You have no questions about your
15 appellate rights?

16 MS. WELCH: No, sir.

17 THE COURT: Okay. Paragraph (b) talks about
18 what are essentially collateral attacks filed pursuant
19 to 2255. Do you see you waive your right to
20 collaterally attack the conviction and sentence in this
21 case?

22 MS. WELCH: Yes, Your Honor.

23 THE COURT: There is one limited exception
24 which is you can challenge the ineffective assistance of
25 your counsel or prosecutorial misconduct that is not

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1 known to you at the time of entry of judgment. Do you
2 understand that?

3 MS. WELCH: Yes, Your Honor.

4 THE COURT: Okay, Mr. Hamilton, I am sorry to
5 ask you another question about this, but does the clause
6 "not known to her at the time of judgment" limit her to
7 prosecutorial misconduct and not limited to ineffective
8 assistance? In other words, if she knows of ineffective
9 assistance before judgment but doesn't find -- here is
10 why I ask. Let's say she knows it, but she doesn't know
11 it has prejudiced her until the time of judgment, it
12 seems to me she could clearly appeal that. Does that
13 make sense under *Strickland*?

14 MR. HAMILTON: Yes, Your Honor.

15 THE COURT: Or collaterally attack that, not
16 appeal that, I am sorry. In other words, is the clause
17 only limited to prosecutorial misconduct?

18 MR. HAMILTON: I don't believe so, Your Honor.

19 THE COURT: If she knows of deficient
20 performance, I guess, to know of ineffective assistance
21 under the legal definition maybe you have to know both
22 deficiency and prejudice. If she didn't know of the
23 prejudice, she wouldn't know of ineffective assistance.
24 Is that a fair statement?

25 MR. HAMILTON: I believe that would be fair,

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1 Your Honor.

2 THE COURT: We are talking about a bunch of
3 legal mumbo jumbo. Here is what this says. To be safe
4 if you know of any ineffective assistance or
5 prosecutorial misconduct, you better bring it to the
6 Court's attention right away.

7 MS. WELCH: Yes, sir.

8 THE COURT: If don't bring it to the Court's
9 attention right way, you waive your right to
10 collaterally attack it.

11 MS. WELCH: Yes, Your Honor.

12 THE COURT: Paragraph 14 just says the
13 agreement's effective once signed. Are those your
14 initials at the bottom of the page?

15 MS. WELCH: Yes, Your Honor.

16 THE COURT: The Plea Agreement continues in
17 Paragraph 15, says this is the full agreement. You see
18 that?

19 MS. WELCH: Yes, Your Honor.

20 THE COURT: That is your signature, your
21 attorney's signature and Mr. Hamilton's signature,
22 correct?

23 MS. WELCH: Yes, Your Honor.

24 THE COURT: Okay. You did not initial this
25 page because you signed it.

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1 MS. WELCH: That is correct.

2 THE COURT: Okay, great.

3 Aside from the Plea Agreement which we have
4 just discussed, did anyone make any other promise of any
5 kind in order to get you to plead guilty?

6 MS. WELCH: No, Your Honor.

7 THE COURT: What we just discussed is your
8 understanding of the full terms of the Plea Agreement?

9 MS. WELCH: Yes, Your Honor.

10 THE COURT: Did I leave anything out that was
11 critical to your decision to plead guilty?

12 MS. WELCH: No, Your Honor.

13 THE COURT: Did I leave anything out that was
14 something you had in your mind that someone promised you
15 in order to plead guilty?

16 MS. WELCH: No, Your Honor.

17 THE COURT: Mr. Hamilton, did I leave anything
18 out that was essential to the government's decision to
19 enter into this agreement?

20 MR. HAMILTON: Your Honor, the government's
21 position on that, as we stated in the past, is that all
22 of the terms are in the Plea Agreement and the
23 government believes that the Court has thoroughly and
24 accurately summarized the Plea Agreement in this case.

25 THE COURT: Do you understand, as we discussed,

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1 if you plead guilty a Presentence Report will be
2 prepared and I will then consider the appropriate
3 sentence?

4 MS. WELCH: Yes, Your Honor.

5 THE COURT: Aside from the Plea Agreement,
6 again, which we just discussed, has any person,
7 including an officer or agent of the government, or any
8 of the lawyers promised or even suggested that you will
9 receive a lighter sentence or any other form of
10 leniency, if you plead guilty?

11 MS. WELCH: No, Your Honor.

12 THE COURT: Is your decision to plead guilty
13 your own free and voluntary act?

14 MS. WELCH: Yes, Your Honor.

15 THE COURT: Have you been subjected to any
16 threats or force of any kind which caused you to plead
17 guilty?

18 MS. WELCH: No, Your Honor.

19 THE COURT: I want you to flip back to the Plea
20 Agreement. I am going to go over the facts with you
21 underlying the essential elements. I am going to go
22 over them briefly because you said they are all
23 accurate. I want to ask you about them, okay. I will
24 ask you about specific facts. I want you to go back to
25 page 3, I think it was, or actually page 2 is where it

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1 starts. You worked, as we talked about, since before
2 2008 and I think you told me you started in 1998 at
3 Pilot, correct?

4 MS. WELCH: Yes, Your Honor.

5 THE COURT: Okay, Pilot, just so I understand,
6 operated travel plazas that I see along the side of the
7 highway.

8 MS. WELCH: Yes, Your Honor.

9 THE COURT: One of the things they have is a
10 direct sales department, right?

11 MS. WELCH: Yes, Your Honor.

12 THE COURT: And you worked in the direct sales
13 department?

14 MS. WELCH: Yes, Your Honor.

15 THE COURT: How long did you work in the direct
16 sales department?

17 MS. WELCH: All my 16 years.

18 THE COURT: From 1998 until now you have work
19 in the direct sales department?

20 MS. WELCH: Yes. I actually worked in direct
21 sales for 14 years.

22 THE COURT: What else did you do?

23 MS. WELCH: I worked in supply and distribution
24 and in dispatch.

25 THE COURT: Was that at the beginning?

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1 MS. WELCH: Yes, sir.

2 THE COURT: Then you worked in direct sales?

3 MS. WELCH: Yes.

4 THE COURT: Okay. One of the things direct
5 sales does is it offers I mean it may be many, but it
6 offers customers incentives, correct?

7 MS. WELCH: Yes, sir.

8 THE COURT: Customers being trucking companies,
9 is that fair, or are there things beyond that?

10 MS. WELCH: Yes, Your Honor. The trucking
11 companies, yes.

12 THE COURT: And in the sales division you
13 worked with others to I guess induce customers to sign
14 contracts and purchase diesel or sign agreements and
15 purchase diesel fuel from your travel plazas.

16 MS. WELCH: Not all contracts had to be signed.
17 Some were verbal contracts, yes.

18 THE COURT: So, thank you for clarifying that.
19 You worked with others to get these diesel companies or
20 trucking companies to sign or to agree to terms of
21 reductions.

22 MS. WELCH: Yes, sir.

23 THE COURT: Okay. You had, you didn't, did you
24 directly negotiate the discounts with the trucking
25 companies or did you just support others who did so?

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1 MS. WELCH: Both.

2 THE COURT: What was your title at the end?

3 MS. WELCH: Senior account manager.

4 THE COURT: Okay. And if you look at paragraph
5 (c) -- I am not going over this with you because I
6 always butcher it because there is multiple ways that
7 discounting was done. Is that a fair statement?

8 MS. WELCH: Yes, sir.

9 THE COURT: Paragraph (c) accurately lays those
10 out.

11 MS. WELCH: Yes, sir.

12 THE COURT: And then ultimately the customer
13 gets to choose under this plan how to receive discounts.
14 Some were directly paid at the pump. In other words,
15 you know, like you have a Kroger Plus card, put it in,
16 there's a direct discount taken out.

17 MS. WELCH: Yes, Your Honor.

18 THE COURT: Others were sent as a rebate check?

19 MS. WELCH: Yes, Your Honor.

20 THE COURT: Then were others just a discount on
21 the bill that they ultimately paid?

22 MS. WELCH: Yes, Your Honor.

23 THE COURT: Different plazas, and now I am
24 flipping the page again. I am going to page 4 and you
25 look at paragraph (e). That talks about how different

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1 plazas had different deals, correct?

2 MS. WELCH: Yes, Your Honor.

3 THE COURT: Trucking companies it says in
4 paragraph (e) it made it difficult for them to figure
5 out whether they were getting the correct discounts. Is
6 that a fair statement?

7 MS. WELCH: Yes, Your Honor.

8 THE COURT: And now I am going to read
9 paragraph (f). I want you to listen closely.

10 "Since at least 2008 defendant Welch has been
11 encouraged by and generally instructed by and has agreed
12 with other Pilot sales direct sales division employees
13 to deceptively reduce some Pilot customers monthly
14 rebates without the customer's knowledge."

15 Is that a true and accurate statement?

16 MS. WELCH: Yes, sir.

17 THE COURT: To mail rebates checks that state
18 -- I am reading now -- "to mail rebate checks that state
19 fraudulently reduced rebate amounts to customers that
20 create and maintain the materially false pretext that
21 the effected Pilot customers are receiving the full
22 benefit of their agreement upon -- the full benefit of
23 their agreed upon diesel price discount with Pilot and
24 to make false representations by way of material
25 admissions that Pilot is accurately and honestly

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1 determining the effective customer's rebate amount based
2 on the customer's agreed upon diesel discount price with
3 Pilot."

4 MS. WELCH: Yes, Your Honor.

5 THE COURT: Did you hear me read all that?

6 MS. WELCH: I did.

7 THE COURT: Is that a true and accurate
8 statement?

9 MS. WELCH: Yes, sir.

10 THE COURT: Now, paragraph (g) lists what you
11 did specifically, correct?

12 MS. WELCH: Yes, sir.

13 THE COURT: Okay. It talks about how you
14 participated in the conspiracy to commit mail fraud by
15 preparing and emailing monthly spreadsheets for approval
16 to other Pilot direct sales personnel. Tell me how that
17 actually worked.

18 MS. WELCH: Each month once we got the gallons
19 and the discount information, we have a spreadsheet we
20 maintain. I would fill it in, send it on to my salesmen
21 and they would reply back.

22 THE COURT: Did the spreadsheet include, it
23 says here it included the deceptively reduced rebate
24 amount for some of the listed customers. Is that a true
25 and accurate statement?

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1 MS. WELCH: Yes, Your Honor.

2 THE COURT: Did it also include, would it
3 include -- and Mr. Hamilton, if you have any problem
4 with me asking this, I will stop. Would it include the
5 actual amount they should get and the reduced amount --

6 Mr. Kurtz, you can consult with her --
7 -- or just the reduced amount?

8 MS. WELCH: Mine originally just showed the
9 reduced amount. Starting in February and March it
10 showed both amounts.

11 THE COURT: February and March of this year?

12 MS. WELCH: Yes, sir.

13 THE COURT: Okay. Once it was approved -- and
14 I am reading from kind of the middle of the paragraph.
15 Once the deceptive amount was approved by other
16 personnel, you would cause an amount generally by way of
17 a check -- we talked about this before, to be sent by
18 U.S. mail or commercial carrier.

19 MS. WELCH: Yes, sir.

20 THE COURT: And one of the customers that was
21 adversely affected was Dana Transport in New Jersey?

22 MS. WELCH: Yes, sir.

23 THE COURT: Okay. And you during your
24 participation in the conspiracy you knew that the mails
25 were being used with the intent to defraud, among

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1 others, Dana Transport in New Jersey?

2 MS. WELCH: Yes, Your Honor.

3 THE COURT: The check was sent, the deceptively
4 reduced amount was sent from Tennessee to New Jersey?

5 MS. WELCH: Yes, Your Honor.

6 THE COURT: Now, look at paragraph (h). That
7 talks about a November of 2012 sales meeting that you
8 attended where a national sales accounts director
9 encouraged you all to defraud and you went over the
10 schemes and things like that. Is that a fair summary?

11 MS. WELCH: Yes, Your Honor.

12 THE COURT: Is there anything else that I left
13 out?

14 MS. WELCH: No, sir.

15 THE COURT: That is what went on at that
16 meeting. Obviously you probably talked about other
17 things.

18 MS. WELCH: Yes, that was covered. More went
19 on, yes.

20 THE COURT: In paragraph (i) it talks about,
21 and am just going to read it. "Defendant Welch and her
22 coconspirator Pilot employees caused fraudulently
23 determined rebate check amounts to be sent to some of
24 Pilot's customers so Pilot could fraudulently retain
25 rebates that were owed to the customers and so Pilot

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1 could create and maintain the false pretense that those
2 customers were in fact receiving their agreed upon
3 diesel price discount with Pilot for the purpose of
4 inducing those customers to continue their purchasing of
5 diesel fuel from Pilot rather than a competitor." Is
6 that accurate?

7 MS. WELCH: Yes, Your Honor.

8 THE COURT: Is there anything I said about that
9 that is inaccurate?

10 MS. WELCH: No, Your Honor.

11 THE COURT: Okay. And you agree that the
12 customers, as paragraph (j) details, relied upon the
13 representations?

14 MS. WELCH: Yes, Your Honor.

15 THE COURT: Then paragraph (k) just goes
16 through the legalese, basically. You read that and
17 reviewed that?

18 MS. WELCH: Yes, Your Honor.

19 THE COURT: You agree that we went over the
20 essential elements earlier. Now we have gone over the
21 facts and that you have in fact committed between 2008
22 and 2013 a conspiracy to defraud some of Pilot's
23 customers by using the mails in furtherance and you
24 conspired and agreed to do this -- let me start over.

25 You conspired with some of the other Pilot

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1 employees to deceive the customers, correct?

2 MS. WELCH: Yes, Your Honor.

3 THE COURT: And you used the mails in
4 furtherance of that conspiracy?

5 MS. WELCH: Yes, sir.

6 THE COURT: You agree that the customers relied
7 on your representations, including the rebate checks,
8 during the course of this conspiracy?

9 MS. WELCH: Yes, Your Honor.

10 THE COURT: They relied on the mail to get
11 either their rebate checks or to get whatever discount
12 was shown to them?

13 MS. WELCH: Yes, Your Honor.

14 THE COURT: You agree that as paragraph (1)
15 delineates, an overt act was committed in furtherance of
16 the conspiracy. And what that means is you can agree
17 with others to do things, but some actions were taken to
18 further the conspiracy, including the mailing of the
19 rebate checks, the sending of the spreadsheets. All
20 these things were done to further the conspiracy.

21 MS. WELCH: Yes, Your Honor.

22 THE COURT: Then we already went over paragraph
23 (m).

24 Is there anything I left out, Mr. Hamilton,
25 that is critical in your mind? Obviously all the facts

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1 are critical, as listed in the Plea Agreement, I
2 understand that, but that is critical to her pleading
3 guilty. In other words, have I covered all the facts
4 underlying the essential elements?

5 MR. HAMILTON: Yes. Thank you, Your Honor, for
6 understanding the government's technical response to
7 some of these questions.

8 THE COURT: I appreciate the technical
9 response. I hope you will protect whatever you need to.

10 MR. HAMILTON: My only suggestion would be. I
11 think the Court very accurately identified the universe
12 of potential overt acts which would be e-mails and
13 spreadsheets and checks that were mailed, but the overt
14 act that is identified in paragraph (1) is the meeting
15 that the Court previously referenced. That would be the
16 government's only possible --

17 THE COURT: Why don't you say that so she
18 understands it. In other words, you and I may
19 understand what you are talking about. Just explain it.

20 MR. HAMILTON: As the Court previously pointed
21 out, one of the essential elements of the conspiracy
22 charge is the government's proof of an overt act. As
23 the Court previously identified, there would be other
24 facts relevant to it, to this plea process and to the
25 guilty plea process and the overall facts. The overt

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1 act that is identified in the factual basis in paragraph
2 (1) to satisfy that essential element is the mandatory
3 November 19th, 2012, sales meeting at 5508 Lonas Drive
4 where Pilot's national accounts director led a training
5 session which encouraged top Pilot direct sales
6 personnel how to defraud without detection some of
7 Pilot's customers who receive their discount in the form
8 of a monthly rebate amount. This meeting the Court
9 previously referenced in the preceding paragraph.

10 THE COURT: What Mr. Hamilton and I are talking
11 about, Ms. Welch, so you understand it, is in order to
12 prove you guilty the government would have to show you
13 conspired with others and then you took actions in
14 furtherance of that conspiracy. Do you understand that?

15 MS. WELCH: Yes, sir.

16 THE COURT: It can't be under 371, it can under
17 a different conspiracy, that you just agreed. You
18 actually have to take actions in furtherance of that
19 conspiracy. Do you understand?

20 MS. WELCH: Yes, Your Honor.

21 THE COURT: There is many actions listed in
22 this Plea Agreement, including e-mails, including the
23 mailing we talked about to New Jersey, that would be an
24 action in furtherance. It could be a simple phone call
25 to a customer where you agreed. The one that the

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1 government is specifically referencing that they would
2 show and that you agree to is this sales meeting that
3 occurred in November of 2012. Does that make sense?

4 MS. WELCH: Yes, Your Honor.

5 THE COURT: Do you have any questions about
6 that?

7 MS. WELCH: No, Your Honor.

8 THE COURT: Mr. Hamilton, is there anything
9 else that you would like me to cover or anything I left
10 out before I proceed to my findings?

11 MR. HAMILTON: No, Your Honor. Thank you.

12 THE COURT: In light, Ms. Welch, in light of
13 everything I have told you about your rights and in
14 light of all my questions, how do you plea to the charge
15 listed in Count 1 of the Information, which is the
16 conspiracy charge in violation of 18 United States Code
17 Section 371? Guilty or not guilty?

18 MS. WELCH: Guilty.

19 THE COURT: The Court has observed the
20 appearance and responsiveness of Ms. Welch in giving her
21 answers to the questions asked. Based on such
22 observation and the answers given, the Court is
23 satisfied that she is in full possession of her
24 faculties, she is not suffering from any apparent
25 physical or mental illness. She is not under the

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1 influence of narcotics or alcohol. The medication which
2 she is taking clearly does not affect her ability to
3 think or understand what is going on.

4 She understands the proceeding in which she is
5 engaged. She understands the nature and meaning of the
6 charges and consequences of her plea of guilt. She is
7 aware of all plea negotiations undertaken on her behalf.
8 The Court finds the defendant is fully competent and
9 capable of entering an informed plea and her plea of
10 guilty is a knowing and voluntary plea supported by an
11 independent basis in fact containing each of the
12 essential elements of the offense. Her plea of guilty,
13 therefore, is accepted.

14 Mr. Hamilton, remind me -- I know we have been
15 setting status conferences in this case. I just moved a
16 bunch of them. Would you prefer I set a status
17 conference in this case, as well, rather than a
18 sentencing date?

19 MR. HAMILTON: Yes, Your Honor.

20 THE COURT: Okay. My next question is and you
21 just remind me if you remember, did we have probation
22 start preparing the Presentence Reports or did we wait
23 and just set the status conference?

24 MR. HAMILTON: My understanding is we are
25 waiting for the status conference.

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1 THE COURT: Ms. Welch, what I am going to do --
2 Judge Guyton set the bond in your case, correct?

3 MS. WELCH: Yes, sir.

4 THE COURT: The only thing left for me to do is
5 set a status conference in this case. Do you know when
6 the status conferences are?

7 COURTROOM DEPUTY: I can tell you in one
8 second.

9 MR. HAMILTON: I believe October 1st.

10 THE COURT: Do you know what time the last one
11 we set was?

12 COURTROOM DEPUTY: 2:30.

13 THE COURT: We'll set this at 2:45.

14 Mr. Hamilton, is there any reason I guess --
15 here's what I will say. If later on you determine we
16 can do a bunch at once, just file a motion to
17 consolidate them and I will consolidate them into one.
18 If you prefer they be handled separately, I will leave
19 them as is.

20 MR. HAMILTON: Yes, sir.

21 THE COURT: The final thing, Ms. Welch. Is at
22 some point at the status conference we'll talk about how
23 the Presentence Report process works. I know Mr. Kurtz
24 will go over it with you in detail. The only thing I am
25 going to tell you just so you know, at some point

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1 probation will meet with you and they'll want to know a
2 whole bunch of things about you so I can get an accurate
3 picture of you at the time of sentencing. You are
4 welcome to have Mr. Kurtz present there, when they meet
5 with you. Do you understand that?

6 MS. WELCH: Yes, Your Honor.

7 THE COURT: Mr. Kurtz, you will go over with
8 her the entire presentence process. I know you have
9 already done it, but how the Presentence Report
10 specifically process works.

11 MR. KURTZ: I will.

12 THE COURT: Mr. Kurtz, is there anything else
13 you think we need to handle from your perspective?

14 MR. KURTZ: No, Your Honor. I don't believe
15 there is.

16 THE COURT: Mr. Hamilton, anything you think we
17 need to handle with regard to Ms. Welch?

18 MR. HAMILTON: The only thing we need to do
19 today, Your Honor, the original Plea Agreement from
20 which we were speaking today has been passed back to the
21 government's table. At this time the United States
22 would like to file that as part of the record as the
23 next record number.

24 THE COURT: Great. We'll file it after the
25 waiver of indictment in the record.

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1 Thank you very much for doing that.

2 MR. HAMILTON: Just so the record will be
3 clear, when the United States filed the Plea Agreement
4 that the Court was reviewing, the United States had a
5 copy. That was received. Now we are submitting the
6 original. I have my original signature on it noting
7 that I signed it in court today. That is a copy of the,
8 it is the original of the copy previously filed.

9 THE COURT: Thank you very much. That and the
10 waiver of indictment will be filed in the record. Judge
11 Guyton already unsealed the case, correct?

12 MR. HAMILTON: That is correct, Your Honor.

13 THE COURT: Ms. Welch, thank you. I will see
14 you whenever I told you I would see you, October 1st.

15 MS. WELCH: At 2:45.

16 THE COURT: Thank you. Have a nice day.

17 (Court was recessed.)

18 I CERTIFY THAT THE FOREGOING IS AN ACCURATE
19 TRANSCRIPT OF THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



22 _____
JOLENE OWEN.
23 Registered Professional Reporter
United States District Court
24 Eastern District of Tennessee
25